

The serious problems with this legislation are many and this letter will not attempt to catalogue them all. Indeed, because the legislation has only just been made available, many of the serious flaws in this long, complex bill are only now coming to light. For instance, the bill contains a new, very expansive definition of enemy combatant. This definition violates traditional understandings of the laws of war and runs directly counter to President Bush's pledge to develop a common understanding of such issues with U.S. allies. Because the proposed definition of combatant is so broad, the language may also have potential consequences for U.S. civilians. For instance, it may mean that adversaries of the United States will use the definition to define civilian employees and contractors providing support to U.S. combat forces, such as providing food, to be "combatants" and therefore legitimate subjects for attack. Yet, there has been no opportunity to consider and debate the implications of this definition, or other parts of the bill such as the definitions of rape and sexual abuse.

We strongly oppose the provisions in the bill that strip individuals who are detained by the United States of the ability to challenge the factual and legal basis of their detention. Habeas corpus is necessary to avoid wrongful deprivations of liberty and to ensure that executive detentions are not grounded in torture or other abuse.

We are deeply concerned that many provisions in the bill will cast serious doubt on the fairness of the military commission proceedings and undermine the credibility of the convictions as a result. For instance, we are deeply concerned about the provisions that permit the use of evidence obtained through coercion. Provisions in the bill which purport to permit a defendant to see all of the evidence against him also appear to contain serious flaws.

We believe that any good faith interpretation of the definitions of "cruel, inhuman and degrading" treatment in the bill would prohibit abusive interrogation techniques such as waterboarding, hypothermia, prolonged sleep deprivation, stress positions, assaults, threats and other similar techniques because they clearly cause serious mental and physical suffering. However, given the history of the last few years we also believe that the Congress must take additional steps to remove any chance that the provisions of the bill could be exploited to justify using these and similar techniques in the future.

Again, this letter is not an attempt to catalogue all of the flaws in the legislation. There is no reason why this legislation needs to be rushed to passage. In particular, there is no substantive reason why this legislation should be packaged together with legislation unrelated to military commissions or interrogation in an effort to rush the bill through the Congress. Trials of the alleged "high value" detainees are reportedly years away from beginning. We urge the Congress to take more time to consider the implications of this legislation for the safety of American personnel, for U.S. efforts to build strong alliances in the effort to defeat terrorists and for the traditional U.S. commitment to the rule of law. Unless these serious problems are corrected, we urge you to vote no.

Sincerely,

Physicians for Human Rights.  
Center for National Security Studies.  
Amnesty International USA.  
Human Rights Watch.  
Human Rights First.  
American Civil Liberties Union.  
Open Society Policy Center.  
Center for American Progress Action Fund.  
The Episcopal Church.

Jewish Council for Public Affairs.  
National Religious Campaign Against Torture.  
Presbyterian Church (USA), Washington Office.  
Friends Committee on Nat'l Legislation.  
Maine Council of Churches.  
Pennsylvania Council of Churches.  
Wisconsin Council of Churches.  
Brennan Center for Justice at NYU Law School.  
Center for Constitutional Rights.  
Robert F. Kennedy Memorial Center for Human Rights.  
The Bill of Rights Defense Committee.  
Unitarian Universalist Service Committee.  
Leadership Conference of Women Religious.  
Center for Human Rights and Global Justice, NYU School of Law.  
The Shalom Center.  
Washington Region Religious Campaign Against Torture.  
The Center for Justice and Accountability.  
Center of Concern.  
Justice, Peace & Integrity of Creation Missionary Oblates.  
Rabbis for Human Rights—North America.  
Humanist Chaplaincy at Harvard University.  
No2Torture.  
Maryland Christians for Justice and Peace.  
American Library Association.  
Churches Center for Theology and Public Policy.  
Disciples Justice Action Network (Disciples of Christ).  
Equal Partners in Faith.  
Christians for Justice Action (United Church of Christ).  
Reclaiming the Prophetic Voice.  
Baptist Peace Fellowship of North America.  
Pax Christi USA: National Catholic Peace Movement.  
Fellowship of Reconciliation.  
Maryknoll Office for Global Concerns.

Mr. Speaker, I turn now to the gentleman from Massachusetts (Mr. FRANK), a former member of the committee, 1 minute.

Mr. FRANK of Massachusetts. Mr. Speaker, I understand the lack of compassion for terrorists. I share much of it. But this is not about terrorists. This is about people accused of terrorism. And there may be human realms where infallibility is a valid concept, not in the arresting of people and certainly not when this is done in the fog of war.

Have we not had enough examples of error, of people like the recent case, to our embarrassment, of a man sent to Syria to be tortured by the United States wrongly; of Captain Yee; of Mr. Mayfield in Oregon?

Have we not had enough examples of error to understand that you need to give people accused of this terrible crime a way to prove that the accusations were not true? That is what is at risk here.

I believe that the law enforcement people of America and the Armed Forces of America are the good guys. But they are not the perfect guys. They are not people who don't make mistakes, particularly acting as they do under stress.

It is a terrible thing to contemplate that this bill will allow people to be locked up indefinitely with no chance to prove that they were locked up in error. We should not do it.

Mr. CONYERS. Mr. Speaker, I yield myself the balance of my time.

The last reason for the many that have been brought forward as to why this legislation is dangerous and unwise is that it endangers our troops because it has the effect of lowering the standards set forth in the Geneva Conventions. By allowing the President to unilaterally interpret the Geneva Conventions and then exempting his interpretations from any scrutiny, we are creating a massive loophole to this time-honored treaty and endangering our own troops.

As the head of Army intelligence, Lieutenant General Kimmons warned us, no good intelligence is going to come from abusive practices. I think history tells us that. And if you don't believe him, just ask Maher Arar, an innocent Canadian national, who was sent by our Nation, I am sorry to report, to Syria where he was tortured.

This legislation decimates separation of powers by retroactively cutting off habeas corpus. Let us not approve this legislation in the House of Representatives this evening.

Mr. Speaker, I yield back the balance of my time.

Mr. SENSENBRENNER. Mr. Speaker, I yield myself 3 minutes, and I would like to make a couple of points.

First of all, this legislation has to be read in conjunction with the Detainee Treatment Act which was signed into law last year. That law provides for a procedure to review whether or not someone is properly detained as an enemy combatant. So the business of indefinite detention is a red herring.

Secondly, this legislation itself creates a number of new rights for detainees and people who are tried before military commissions. Let me enumerate them. There are 26 new rights:

A right to counsel provided by the government at trial and throughout appellate proceedings; an impartial judge; the presumption of innocence; standard of proof is beyond a reasonable doubt.

The right to be informed of the charges against the defendant as soon as practicable.

The right to service of charges sufficiently in advance of trial to prepare a defense.

The right to reasonable continuances.

The right to peremptorily challenge members of the commission. That is something nobody has in the United States against a Federal judge.

Witnesses must testify under oath and counsel, and members of the military commission must take an oath.

The right to enter a plea of not guilty.

The right to obtain witnesses and other evidence.

The right to exculpatory evidence as soon as practicable.

The right to be present in court, with the exception of certain classified evidence involving national security, preservation of safety or preventing disruption of proceedings.